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TITLE 5--GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III--EMPLOYEES

Subpart F--Labor-Management and Employee Relations

CHAPTER 71--LABOR-MANAGEMENT RELATIONS

SUBCHAPTER III--GRIEVANCES, APPEALS, AND REVIEW

Sec. 7121. Grievance procedures

(a) (1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d), (e), and (g) of this section, the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b) (1) Any negotiated grievance procedure referred to in subsection (a) of this section shall--

- (A) be fair and simple,
- (B) provide for expeditious processing, and
- (C) include procedures that--

(i) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(ii) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(iii) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(2) (A) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1) (C) (iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order--

- (i) a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board; and

(ii) the taking, by an agency, of any disciplinary action identified under section 1215(a) (3) that is otherwise within the authority of such agency to take.

(B) Any employee who is the subject of any disciplinary action ordered under subparagraph (A) (ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning--

- (1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);
- (2) retirement, life insurance, or health insurance;
- (3) a suspension or removal under section 7532 of this title;
- (4) any examination, certification, or appointment; or
- (5) the classification of any position which does not result in the reduction in grade or pay of an employee.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b) (1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e) (1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in

accordance with this section, an arbitrator shall be governed by section 7701(c) (1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

(g) (1) This subsection applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which subsection (d) applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (1) may elect not more than one of the remedies described in paragraph (3) with respect thereto. For purposes of the preceding sentence, a determination as to whether a particular remedy has been elected shall be made as set forth under paragraph (4).

(3) The remedies described in this paragraph are as follows:

(A) An appeal to the Merit Systems Protection Board under section 7701.

(B) A negotiated grievance procedure under this section.

(C) Procedures for seeking corrective action under subchapters II and III of chapter 12.

(4) For the purpose of this subsection, a person shall be considered to have elected--

(A) the remedy described in paragraph (3) (A) if such person has timely filed a notice of appeal under the applicable appellate procedures;

(B) the remedy described in paragraph (3) (B) if such person has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedure; or

(C) the remedy described in paragraph (3) (C) if such person has sought corrective action from the Office of Special Counsel by making an allegation under section 1214(a) (1).

(h) Settlements and awards under this chapter shall be subject to the limitations in section 5596(b) (4) of this title.

(Added Pub. L. 95-454, title VII, Sec. 701, Oct. 13, 1978, 92 Stat. 1211; amended Pub. L. 103-424, Sec. 9, Oct. 29, 1994, 108 Stat. 4365; Pub. L. 105-261, div. A, title XI, Sec. 1104(b), Oct. 17, 1998, 112 Stat. 2142.)

#### Amendments

1998--Subsec. (h). Pub. L. 105-261 added subsec. (h).

1994--Subsec. (a) (1). Pub. L. 103-424, Sec. 9(c), substituted `` (d) , (e) , and (g) '' for `` (d) and (e) '' and inserted `` administrative '' after

``exclusive''.

Subsec. (b). Pub. L. 103-424, Sec. 9(a), designated existing provisions as par. (1) and redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and subpars. (A) to (C) of former par. (3) as cls. (i) to (iii) of subpar. (a)(1)(C), respectively, and added par. (2).

Subsec. (g). Pub. L. 103-424, Sec. 9(b), added subsec. (g).

#### Partial Suspension of Federal Service Labor-Management Relations

Subsec. (b)(3)(C) of this section suspended with respect to any grievance involving the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(d) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.